

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 08-CR-36

ROBERT HUFF, et. al.,

Defendants.

ORDER DENYING MOTION FOR RETURN OF PROPERTY

On February 3, 2009, the defendant Robert Huff (“Huff”) filed a motion for the return of a 2007 Mercury Mariner that was seized during the execution of a search warrant at his residence on January 28, 2008 in Gary, Indiana. (Docket No. 405.) The court ordered the government to respond, (Docket No. 410), which it did on February 17, 2009, (Docket No. 421). In its response, the government states that it has moved to dismiss the vehicle from the forfeiture provision in the indictment. (See Docket No. 419.) Judge Clevert subsequently granted the government’s motion to dismiss the vehicle from the indictment. (Docket No. 428.) Huff has not replied.

In response to the defendant’s motion, the government contends that the vehicle was seized as evidence of the crime of drug trafficking. The government contends that Huff used this vehicle to facilitate the conspiracy. Accordingly, the government submits that the defendant’s motion should be denied.

Notwithstanding the purported reason for the seizure, the defendant’s motion alleges that the search warrant did not authorize the seizure of vehicles on the property. The defendant thus

contends that the present detention of the vehicle is without statutory or judicial authority and it must be returned.

Regardless of the respective merits of the parties' positions, Huff's motion for the return of his vehicle is not properly before this court. Pursuant to Federal Rule of Criminal Procedure 41(g) a motion for return of property under these circumstances must be brought in the district where the property was seized, which in this case is the Northern District of Indiana, Hammond Division. See 28 U.S.C. § 93(a)(3).

IT IS THEREFORE ORDERED that Huff's motion for the return of his vehicle, (Docket No. 405), is **denied**, without prejudice.

Dated at Milwaukee, Wisconsin this 25th day of February 2009.

s/AARON E. GOODSTEIN
U.S. Magistrate Judge